



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/169898

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 08, 2015, at Manitowoc, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$776 for the period of August 1, 2015 – September 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ann Luckow

Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. On July 31, 2015, the Petitioner submitted an application for FS benefits. He reported a household size of three, consisting of himself and his two minor daughters. He reported that he

had joint custody and 50/50 placement of his daughters. Petitioner was advised by the agency that a copy of the court order regarding his daughter's placement is needed as verification.

3. On August 3, 2015 and August 12, 2015, the agency issued a Notice of Proof Needed requesting verification of the Petitioner's household composition, child support payments and employment. The due date for the information was August 31, 2015.
4. On August 18, 2015, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$511/month in FS benefits effective August 1, 2015. This was based on a household size of three and \$0 in household income.
5. On August 21, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease from \$511/month to \$123/month effective October 1, 2015. This was based on a household size of one, unemployment compensation benefits of \$370/week, and \$700/month for mortgage expenses.
6. On August 20, 2015, the agency received a copy of the Petitioner's marital settlement agreement. The original agreement from 2011 states that the parties have joint legal custody of the two children. It further gives primary physical placement of the children to their mother with the Petitioner "having reasonable periods of physical placement." On August 24, 2015, the agency received an order dated June 22, 2015 revising physical placement provisions of the marital settlement agreement. According to the order, placement of the children with the Petitioner is as follows:

Week 1

Mondays 7 a.m. – Tuesdays, 7:30 p.m.	36.5 hours
Thursdays 7 a.m. – 7:30 p.m.	12.5 hours
Fridays 7 a.m. – 7:30 p.m.	12.5 hours
Total Week 1	61.5 hours/168 hours in a week

Week 2

Mondays 7 a.m. – Tuesdays, 7:30 p.m.	36.5 hours
Thursdays 7 a.m. – 7:30 p.m.	12.5 hours
Fridays 7 a.m. – Sundays 8:00 p.m.	61.0 hours
Total Week 2	110.0 hours/168 hours in a week

7. On September 16, 2015, September 18, 2015 and October 2, 2015, the agency issued Notices of Decision to the Petitioner informing him that the two children were not part of his household and his FS benefits would decrease.
8. On October 20, 2015, the agency issued a FoodShare Overpayment Notice to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$776 for the period of August 1, 2015 – September 30, 2015 due to his failure to report correct child placement.
9. On November 6, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally

speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

The burden of proof in a fair hearing concerning an overissuance of FS benefits is on the agency.

The basis for the agency’s action in this case is its allegation that the Petitioner incorrectly reported that his household included his two minor children. A companion case, DHA Case No. FOO/169897, addressed the issue of whether the children should be included in the Petitioner’s household. Based on the same rationale in that case, I find that the Petitioner’s children were properly a part of his household for FS purposes based on the revised physical placement order from the court. The Petitioner has placement of the children at least 50% and provides at least 50% of their needs. Therefore, I conclude the agency may not recover an overpayment of FS benefits from the Petitioner in the amount of \$776 for the period of August 1, 2015 – September 30, 2015 for failure to properly report child placement.

CONCLUSIONS OF LAW

The agency may not recover an overpayment of FS benefits from the Petitioner in the amount of \$776 for the period of August 1, 2015 – September 30, 2015 for failure to properly report child placement.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind the FS overpayment for Claim # [REDACTED] against the Petitioner and cease any and all actions to collect the overpayment represented by that claim from the Petitioner. These actions shall be completed as soon as possible but no later than 7 days from the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of December, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 30, 2015.

Manitowoc County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability